

REVENUE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.4, 421.1A(4)“f” and 421.1A(4)“g,” the Property Assessment Appeal Board hereby gives Notice of Intended Action to amend Chapter 126, “Property Assessment Appeal Board,” Iowa Administrative Code.

These amendments are proposed, in part, to bring the Board’s rules into conformance with statutory changes enacted by 2017 Iowa Acts, House File 478.

The proposed amendment in Item 1 clarifies that a party filing with the Board need only file an appeal, specifies the contents of said appeal, and notes the party’s right to make an amendment to the appeal. The amendment also notes that for appeals filed after January 1, 2018, parties may raise new grounds before the Board not previously pleaded to the local board of review. The amendment also clarifies what information a local board of review is required to include in its answer.

The proposed amendment in Item 2 implements a process for an appellant to seek refund or credit if successful in a Board appeal.

The proposed amendment in Item 3 updates an internal cross reference noting that a hearing scheduling and discovery plan is required to be filed in certain cases within 60 days of the board of review’s answer.

The proposed amendment in Item 4 adopts language addressing discovery, including questions of relevancy and admissibility. The amendment addresses the Board’s taking judicial notice of publicly available information identified by the parties in a contested case. The amendment also changes the process for parties to request subpoenas and states when the Board shall refuse to issue a subpoena.

The proposed amendment in Item 5 notes the Board no longer transcribes contested case hearings but rather keeps digital recordings of the hearings.

The proposed amendment in Item 6 makes changes to the process for seeking judicial review of the Board’s final agency action for appeals filed after January 1, 2018.

The proposed amendment in Item 7 is intended to implement the changes made by 2017 Iowa Acts, House File 478.

Any interested person may make written suggestions or comments on the proposed amendments on or before September 19, 2017. Such written comments should be directed to the Property Assessment Appeal Board, P.O. Box 10486, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact the Board at (515)725-0338 or at the Board offices at the Hoover State Office Building, Fourth Floor, 1305 East Walnut Street, Des Moines, Iowa.

Requests for a public hearing must be received by September 19, 2017.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 421.1A and 441.37A and 2017 Iowa Acts, House File 478.

The following amendments are proposed.

ITEM 1. Amend rule 701—126.2(421,441) as follows:

701—126.2(421,441) Appeal and certification answer.

126.2(1) *Appeal and jurisdiction.* The procedure for appeals and parameters for jurisdiction are as follows:

a. Jurisdiction is conferred upon the board by filing an appeal with the board. The appeal shall ~~include a petition setting set~~ forth the basis of the grounds for appeal and the relief sought. The appeal shall be filed with the board within 20 calendar days after the date of adjournment of the local board of review or May 31, whichever is later. Appeals postmarked within this time period shall also be considered to have been timely filed. For an appeal filed through the electronic filing system to be timely, the appeal must be filed by 11:59 p.m. on the last day for filing.

b. The appeal may be filed through the board's electronic filing system, delivered in person, mailed by first-class mail, or delivered to an established courier service for immediate delivery.

126.2(2) *Form of appeal.* The appeal shall include:

a. The appellant's name, mailing address, e-mail address, and telephone number;

b. The address of the property being appealed and its parcel number;

c. The grounds for appeal;

~~*d.*~~ *d.* A short and plain statement of the claim;

~~*e.*~~ *e.* The relief sought; and

~~*f.*~~ *f.* If the party is represented by an attorney or designated representative, the attorney or designated representative's name, mailing address, e-mail address, and telephone number.

126.2(3) *Amendment of appeal.* The appellant may amend the appeal once as a matter of course within 20 days after it is filed to add or modify the grounds for appeal. Otherwise, the appellant may only amend the appeal by leave of the board or by written consent of the adverse party.

~~**126.2(3)**~~ **126.2(4) *Scope of review.***

a. Grounds for appeal. The appellant may appeal the action of the board of review relating to protests of assessment, valuation, or the application of an equalization order. ~~No new grounds in addition to those set out in the protest to the local board of review can be pleaded, but additional evidence to sustain those grounds may be introduced.~~ The board shall determine anew all questions arising before the local board of review which relate to the liability of the property to assessment or the amount thereof.

(1) For assessment years prior to January 1, 2018, no new grounds in addition to those set out in the protest to the local board of review can be pleaded but additional evidence to sustain those grounds may be introduced.

(2) For assessment years beginning on or after January 1, 2018, new grounds in addition to those set out in the protest to the local board of review may be pleaded and additional evidence to sustain those grounds may be introduced. The board may order the appellant to clarify the grounds on which the appellant seeks relief.

b. Burden of proof. There shall be no presumption as to the correctness of the valuation of the assessment appealed from. ~~The~~

(1) For assessment years prior to January 1, 2018, the burden of proof is on the appellant; however, when the appellant offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the party seeking to uphold the valuation.

(2) For assessment years beginning on or after January 1, 2018, the burden of proof is on the appellant; however, when the appellant offers competent evidence that the market value of the property is different than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold the valuation.

c. The appeal is a contested case.

126.2(4) 126.2(5) *Notice to local board of review.* The board shall serve, through the electronic filing system, a copy of the appellant's appeal to the local board of review whose decision is being appealed. Notice to all affected taxing districts shall be deemed to have been given when written notice is served on the local board of review.

~~126.2(5)~~ **126.2(6)** *Answer and certification by local board of review.* Using the form provided by the board or a conforming document, the local board of review's attorney or representative shall file an answer ~~and certification~~ within 24 30 days after service of the notice of appeal, unless the time period is shortened or extended by the board. The answer ~~and certification~~ shall include a statement setting forth the local board of review's position on the appeal and ~~include the following attachments:~~ the subject property's current assessed value.

- ~~1. The taxpayer's protest to the local board of review;~~
- ~~2. The final decision of the local board of review; and~~
- ~~3. The notice of assessment, if any.~~

~~126.2(6)~~ **126.2(7)** *Docketing.* Appeals shall be assigned consecutive docket numbers. Electronic records consisting of the case name and the corresponding docket number assigned to the case shall be maintained by the board, as well as all filings made in the appeal.

~~126.2(7)~~ **126.2(8)** *Consolidation and severance.* The board or presiding officer may determine if consolidation or severance of issues or proceedings should be performed in order to efficiently resolve matters on appeal before the board.

a. Consolidation. The presiding officer may consolidate any or all matters at issue in two or more appeal proceedings where:

- (1) The matters at issue involve common parties or common questions of fact or law;
- (2) Consolidation would expedite and simplify consideration of the issues involved; and
- (3) Consolidation would not adversely affect the rights of any of the parties to those proceedings.

b. Severance. The presiding officer may, for good cause shown, order any appeal proceedings or portions of the proceedings severed.

~~126.2(8)~~ **126.2(9)** *Appearances.* Any party may appear and be heard on its own behalf, or by its attorney or designated representative. Attorneys and designated representatives both shall file a notice of appearance with the board for each appeal. A designated representative who is not an attorney shall also file a power of attorney. When acting as a designated representative on behalf of a party, the designated representative acknowledges that the representative has read and will abide by the board's rules.

ITEM 2. Amend rule 701—126.5(421,441) as follows:

701—126.5(421,441) Motions and settlements.

126.5(1) No change.

126.5(2) *Motions.* No technical form for motions is required. All prehearing motions shall be in writing, shall be filed with the board and shall contain the reasons and grounds supporting the motion. The board shall act upon such motions as justice may require. Motions based on matters which do not appear of record shall be supported by affidavit. Any party may file a written response to a motion no later than 10 days from the date the motion is filed, unless the time period is extended or shortened by the board or presiding officer. The presiding officer may schedule oral argument on any motion.

a. to c. No change.

d. Motions for refund. For assessment years on or after January 1, 2018, if the board reduces an assessment following a contested case hearing, the appellant shall be notified in the board's final agency action of the appellant's right to elect to be refunded for taxes already paid by filing a motion with the board. Such a motion shall be filed within 10 days of the board's final agency action. If the appellant does not timely file a motion for refund, any change in taxes resulting from the assessment reduction shall be credited toward future tax payments.

126.5(3) *Settlements.* Parties to a case may propose to settle all or some of the issues in the case at any time prior to the issuance of a final decision. A settlement of an appeal shall be jointly signed by the parties, or their designated representatives, and filed with the board. The settlement filed with the board shall indicate whether the assessment modification will result in a tax refund or a credit toward future tax payments. The board will not approve ~~settlements~~ a settlement unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. Board adoption of a settlement constitutes the final decision of the board on issues addressed in the settlement.

ITEM 3. Amend subrule 126.6(1) as follows:

126.6(1) *When required.* For appeals involving properties classified commercial, industrial, or multiresidential and assessed at \$2 million or more, the parties shall confer and file a hearing scheduling and discovery plan within 60 days of the notice provided in subrule ~~126.2(4)~~ 126.2(5). In any other appeal, the parties may jointly file a hearing scheduling and discovery plan or the board may, on its own motion, require parties to file a hearing scheduling and discovery plan. The dates established in a hearing scheduling and discovery plan under this rule shall supersede any dates set forth in any other rule in this chapter.

ITEM 4. Amend rule 701—126.7(421,441) as follows:

701—126.7(421,441) Discovery and evidence.

126.7(1) *Discovery procedure.* The scope of discovery described in Iowa Rule of Civil Procedure 1.503 shall apply to contested case proceedings. When considering a question of relevancy, the board shall consider the provisions of Iowa Code chapter 441, 701—Chapter 71, and other applicable law. The following discovery procedures available in the Iowa Rules of Civil Procedure are available to the parties in a contested case proceeding: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; entry upon land for inspection and other purposes; and requests for admission. The time frames for discovery in specific Iowa Rules of Civil Procedure govern those specific procedures, unless lengthened or shortened by the board.

a. to g. No change.

126.7(2) No change.

126.7(3) *Evidence.*

a. and b. No change.

c. *Scope of admissible evidence.* Evidence in the proceeding shall be confined to the issues contained in the notice from the board prior to the hearing, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. Admissible evidence is that which, in the opinion of the board, is determined to be material, relevant, or necessary for the making of a just decision in accordance with the provisions of Iowa Code section 441.21, 701—Chapter 71, or other applicable law. ~~Irrelevant~~ Upon an objection pursuant to paragraph 126.7(3) “e,” irrelevant, immaterial or unduly repetitious evidence may be excluded. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Hearsay evidence is admissible. The rules of privilege apply in all proceedings before the board.

d. *Exhibits, exhibit and witness lists, and briefs.* The party seeking admission of an exhibit must provide an opposing party with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents to be used as evidence, exhibit lists, and a list of witnesses intended to be called at hearing shall be served on the opposing party at least 21 calendar days prior to the hearing, unless the time period is extended or shortened by the board or presiding officer or the parties have filed a hearing scheduling and discovery plan under rule 701—126.6(421,441). Rebuttal evidence need not be exchanged or served on the opposing party prior to the hearing. All exhibits and briefs admitted into evidence shall be appropriately marked and be made part of the record. The appellant shall mark each exhibit with consecutive numbers. The appellee shall mark each exhibit with consecutive letters. ~~The local board of review’s Exhibit A shall be the subject property’s property record card or cost report.~~

(1) The local board of review’s Exhibit A shall be the subject property’s property record card including the cost report.

(2) The local board of review’s Exhibit B shall be the final decision of the local board of review.

(3) The local board of review’s Exhibit C shall be the appellant’s petition to the local board of review.

e. *Objections.* Any party may object to specific evidence or may request limits on the scope of examination or cross-examination. Such an objection shall be accompanied by a brief statement of the

grounds upon which the objection is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

f. Offers of proof. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

g. Judicial notice of property record cards. Without additional notice, the board may take judicial notice of the property record card or cost report of the subject property if electronically available to the public through the assessor's Web site. At its discretion, the board may take judicial notice of property record cards or cost reports of comparable properties identified by the parties as provided under Iowa Code section 17A.14(4) if electronically available to the public through the assessor's Web site. If the board takes judicial notice of any property record card or cost report, such card or report shall become part of the board's official agency record for the appeal.

126.7(4) Subpoenas.

a. Issuance of subpoena for witness.

(1) A Pursuant to Iowa Code section 17A.13(1), a subpoena shall be issued to a party on request, unless otherwise excluded pursuant to this subrule. The request shall be in writing and include the name, address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least 14 days before the scheduled hearing.

(2) Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

(3) The board shall refuse to issue a subpoena when there is reasonable ground to believe the subpoena is requested for the purpose of harassment; may seek irrelevant information as provided under Iowa Code section 441.21, 701—Chapter 71, or other applicable law; or is untimely. If the board refuses to issue a subpoena, the board shall provide a written statement of the ground for refusal. A party to whom a refusal is issued may obtain a prompt hearing before the board regarding the refusal by filing with the board and serving on all parties a written request for hearing.

b. Issuance of subpoena for production of documents.

(1) ~~A subpoena shall be issued to a party on request. The request shall be in writing and include the name, address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least 14 days before the scheduled hearing.~~

(2) ~~Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas.~~

c. b. Motion to quash or modify. Upon motion, the board or presiding officer may quash or modify a subpoena for any lawful reason in accordance with the Iowa Rules of Civil Procedure or pursuant to this subrule.

ITEM 5. Amend subrule 126.8(8) as follows:

126.8(8) Transcript of hearing Hearing recordings. All hearings shall be electronically recorded. Any party may request a copy of the hearing recording and pay a fee associated with preparing the copy. Any party may provide a certified court reporter at the party's own expense. ~~Any party may request a transcription of the hearing. The board reserves the right to impose a charge for copies and transcripts.~~

ITEM 6. Amend rule 701—126.10(17A,441) as follows:

701—126.10(17A,441) Judicial review.

126.10(1) Appeals of board decisions. A party may seek judicial review of a decision rendered by the board by filing a written notice of appeal with the clerk of the district court where the property is located within 20 days after the board's final agency action is postmarked to the appellant or the final agency action is filed in the board's electronic filing system. Iowa Code chapter 17A applies to judicial review of the board's final decision. The filing of the petition does not itself stay execution or enforcement of

the board's final decision. The board may grant a stay on appropriate terms or other temporary remedies during the pendency of judicial review.

a. For assessment years prior to January 1, 2018, a party may seek judicial review by filing a written notice of appeal with the clerk of the district court where the property is located within 20 days after the board's final agency action is postmarked to the appellant or the final agency action is filed in the board's electronic filing system. Iowa Code chapter 17A applies to judicial review of the board's final decision.

b. For assessment years beginning on or after January 1, 2018, a party may seek judicial review of a decision rendered by the board by filing a petition for judicial review with the clerk of the district court where the property is located within 30 days after the board's action pursuant to Iowa Code chapter 17A.

126.10(2) No change.

ITEM 7. Amend **701—Chapter 126**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 421.1, 421.1A, 421.2, 441.37A, 441.38 and 441.49 and chapters 17A and 22 and 2017 Iowa Acts, House File 478.